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ABSTRACT

The paper demonstrated the need for American Indi - involvement in the education policies affecting Indian children in Alaska. It analyzed the method that the State of Alaska used to fund schools for native children and the administration of the Johnson-O'Malley (JOM) Program by the Bureau of Indian Affairs (BIA). Alaska is in a unique educational situation--other States are held responsible for the education of their citizens; in Alaska, however, as a holdover from territorial status, the State inherited and maintains a dual educational system. It has established a federally funded school district known as the State Operated Schools, which are attended primarily by native Alaskans in isolated rural areas and military dependents. Of the 18,000 students in these schools, 8,000 are native Alaskans. The paper gives some State Education Statutes that place native children in this unique position; a policy statement for the BIA administration of JOM funds; relevant sections from the Alaska Native Claims Settlement Act; and taxing sections from the Statehood Act and the Land Claims Act. The report concluded that the State of Alaska has unique problems in supporting public education for its school age children, which will only be compounded by maintaining a dual school system that excludes Alaskan natives from policy making positions within the State's education structure. (KM)

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EDUCATION POLICY AND ALASKAN NATIVES

by

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The purpose of this paper is to demonstrate the need for Indian involvement in the education policies affecting Indian children. This will be demonstrated through the analysis of: (1) the method that the State of Alaska uses to fund schools for Native Alaskan children; (2) the administration of the Johnson-O'Malley Program by the Bureau of Indian Affairs.

In Section 3 of the Alaskan Statehood Act, the Federal government of the United States declares:

> The constitution of the State of Alaska should always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.

In "Section 1. Public Education," of the subsequent Alaska State Constitution, the following statement appears:

> The legislature shall by general law establish and maintain a system of public schools open to all children of the State and may provide for other public educational institutions...

The above statement is not contrary to national educational policy as it applies to all citizens of the United States.

The Constitution of the United States covers a wide area of powers, duties and limitations, but at no point does it refer expressly to education. Thus, education becomes a state function under the Tenth Amendment which provides:

> The powers not delegated to the United States are reserved to the States respectively, or to the people.

Clearly then, as established in other states, the education of its citizens is the responsibility of the State of Alaska. Yet, as a holdover from territorial status, the State of Alaska inherited and maintains a dual educational system. One extension of that system provides educational

services for Alaskan Natives and the other provides such services to all other State citizens.

It is not the intention of this paper to examine the fiscal resources -- or the lack of them -- that the State has at its disposal. What is considered is whether or not the State of Alaska provides for equal distribution of State resources to all of its citizens.

The costs of providing a public education to a school-age child in Alaska are enormous when compared to other parts of the United States. In terms of State resources, Alaska has sought to deprive Alaskan Natives of those State resources that it provides to non-Natives.

In conversations with both State officials and Congressional Representatives of the State of Alaska, the author of this paper has listened to the argument that the responsibility to educate Native Alaskans rests with the Federal government through the Bureau of Indian Affairs. As stated earlier in this paper, Alaskan Natives have the same rights to State resources as non-Natives.

The State Department of Education in Alaska maintains that a major goal in the State is to transfer control of Bureau of Indian Affairs' schools to the State. Yet when transfer of control does occur, it is from one federally funded system into another.

The State of Alaska has formed a school district known as the State Operated Schools. Isolated rural schools attended primarily by Native Alaskans and on-base schools composed of military dependents are the students in this unique system. The stated reason for the development of this system was to provide a district for those schools outside of organized school districts. Yet upon closer examination, it appears

that the reason for creating such a district was to place those schools supported by federal funds into a single school system.

Of the 18,000 students in the State Operated Schools, 8,000 are Native Alaskans. Despite the fact that the Courts have ruled that the education of Indian children is the States' responsibility, Alaska uses federal funds in lieu of State funds to support these particular schools. In the case of the other 10,000 children, the Courts have ruled that school districts do not have the responsibility to provide educational services to those children attending school whose parents live and work on Federal property, e.g., military dependents. The rationale for this decision is that since property tax is the primary source for raising local revenue to support public schools, and since states cannot tax Federal property, they, therefore, do not have to provide educational services in such federally affected areas.

The Congress of the United States contributes to the support of these children through Public Laws 81-874 and 81-875, commonly referred to as Impact Aid. The State of Alaska has sought to maximize the use of Federal funds in this regard by placing all of these children into one school district. In the process, the State of Alaska has deprived Alaskan Natives of State resources not due to other children in the same district. State discrimminatory policies against Alaskan Natives do not stop here.

Throughout the statutes that govern the public school system in Alaska, there are frequent "disclaimer" clauses that deprive Alaskan Natives of their rights as State citizens even though the Constitution of the State of Alaska makes clear that "the legislature shall by general law establish and maintain a system of public schools open to all children of the State..."

Listed below are some State of Alaska education statutes that are so discrimminatory:

> Chapter 50 Federal Aid. Sec. 14.50.020. Definition of public schools for purposes of Statehood Act. Public schools, for the purpose of Public Law 85-509, 85th Congress, Second Session, includes public elementary schools, the University of Alaska and other public educational institutions which may be established. Nothing in this section includes schools for Alaska aborigines under the control of the Federal government...
>
> Chapter 60. General Provisions. Sec.14.60.010. Definitions. As used in this title, unless the context otherwise requires,
>
> (1) "public schools" include elementary schools, high schools, citizenship rights, schools for adults, and other educational institutions which may be established; however, nothing in this title includes schools for Alaska Natives under the control of the federal government...
>
> Chapter 30. Pupils. Article 1. Compulsory Education. Sec. 14.30.010. When attendance compulsory. (a) Every child between seven and eleven years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for, or control of a child between seven and 16 years of age shall insure that one child is not absent from attendance.
>
> (b) This section does not apply if a child
> (2) attends a school operated by the Federal government...

The examples cited above seem to indicate that the State of Alaska treats Natives as a separate "class" of people. The State Operated System, with an appointed school board and its almost total reliance upon Federal funds to support its "basic" education program for Alaskan Natives, again,

treats them as less than full State citizens.

The administration of the Johnson-O'Malley (JOM) program in Alaska by the Bureau of Indian Affairs (BIA) is another example of the need for Indian input into policy making at the national level.

In "An Agreement Between the State of Alaska and the Bureau of Indian Affairs for the Administration of Johnson-O'Malley Act Funds (Alaska State Plan)" the State of Alaska proclaims:

> It is recognized that Alaska Native children are entitled to the same opportunities for public education as are provided for any other citizen. Neither Native arcestry of students nor the Federal government's historical provision of services to individuals or locations is sufficient justification for the provision of Johnson-O'Malley funds. It is also recognized that extraordinary and exceptional circumstances currently exist in Alaska which can only be met through Federal assistance from the Bureau of Indian Affairs.

The quotation above is the rationale used by State officials to use JOM funds which should be used for supplemental programs for basic school support even though Alaskan Natives each bring in Impact Aid monies. But rather than using JOM funds for supplemental programs, the State of Alaska administers from the State Department of Education a Division of Regional Schools and Boarding Home Program financed primarily by Johnson-O'Malley funds. This program serves Alaskan Natives only and $4,859,000 was allocated to Alaska in FY 1973, the largest portion of these funds going for basic support programs. If the State would contribute more to the Boarding Home - Boarding School program, a portion or all of the JOM money could then be spent on supplemental programs. With a statewide unemployment rate of 64%, Alaskan Natives are in need of a school system in line with their unique educational needs.

The future role of the BIA in Alaska is in question. Quoting from the Alaska Native Claims Settlement Act:

> Sec. 2. Congress finds and declares that --
>
> (b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in divisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, priviliges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special realtionships between the United States Government and the State of Alaska.

Because Federal aid supporting the education of Alaskan Natives is based entirely upon the tax-free status of their land, it appears that when selected land becomes subject to state or local taxes, school support from Federal sources will terminate. Such a conclusion is based upon the following:

1. From the Statehood Act - Sec. 4.

   And provided further, that no taxes shall be imposed by said state upon any lands or other property now owned or hereafter acquired by the United States or which, as hereirabove set forth, belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe and except when held by individual natives in fee without restrictions or alienation.

2. From the Land Claims Act - "Taxation."Sec.21. (e) Real property interests conveyed pursuant to this Act to a Native Corporation shall, so long as the fee therein remains not subject to State or local taxes on real estate, continue to be regarded as public lands for the purpose of computing the Federal share...for the Johnson-O'Malley Act of April 16, 1934, as amended (25 U.S.C. 452), and for the purpose of Public Laws 815 and 874, 81st Congress (64 Stat.967,1100),...

Neither the Statehood Act nor the Land Claims Act exclude the possibility that Native lands may at some future date be taxed. And taxation of selected Native lands will exclude Natives from both the Johnson-O'Malley and Impact Aid programs.

In conclusion, it is evident that the State of Alaska has unique problems in supporting public education for its school age children. But the problems will only be compounded by maintaining a dual school system and excluding Alaskan Natives from policy making positions within the State's education structure.